

New Home Affordable Modification Program (“HAMP”) Loan Modification Guidelines Taking Effect June 1, 2010

Last week, the federal government provided new HAMP borrower outreach and communication guidelines for foreclosure actions while a borrower is being evaluated under HAMP. The guidelines also provide more protection for delinquent borrowers who have filed bankruptcy but would otherwise be eligible for HAMP benefits. For details, see [Supplemental Directive 10-02](#).

Highlights from the directive include the following:

FORECLOSURE. Additional [Foreclosure](#) steps are required:

- The servicer must evaluate the borrower’s eligibility under HAMP and determine that the borrower is ineligible before referring the borrower to foreclosure (or make “reasonable solicitation efforts”).
- If foreclosure activity has already been initiated, the foreclosure sale cannot occur until after the servicer has determined the borrower is ineligible under HAMP (or make “reasonable solicitation efforts”).
- The servicer must give the borrower 30 days to respond to HAMP “Non-Approval Notices” in certain circumstances before conducting the foreclosure sale.
- The servicer must provide the foreclosure attorney certification in writing that the borrower is ineligible for HAMP before conducting the foreclosure sale.

BANKRUPTCY

- If the borrower in active [Chapter 7](#) or [Chapter 13](#) bankruptcy (or attorney or bankruptcy trustee) requests, the servicer **MUST** consider the borrower under HAMP and can no longer decline borrower as a “proper exercise of discretion”.
- If the borrower has been approved on a trial loan modification and files a Chapter 7 or Chapter 13, the servicer **MAY NOT** deny the borrower for a permanent modification only because of filing bankruptcy.
- If a delinquent borrower has a discharged Chapter 7 and chose not to reaffirm the first lien mortgage debt is still eligible under HAMP, with the following provision added to the permanent modification agreement: “I was discharged in a Chapter 7 bankruptcy proceeding subsequent to the execution of the Loan Documents. Based on this representation, Lender agrees that I will not have personal liability on the debt pursuant to this Agreement.”

If you are a homeowner struggling to make your mortgage payment or feel like you’re your lender or servicer has not worked with you on a loan modification, [call](#) a [bankruptcy](#)

[attorney](#) for assistance. Many [lawyers](#) are happy to offer prospective clients a free consultation.